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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,¹

USA SECURITIES, LLC,²

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**OBJECTION OF USACM TRUST TO
PROOFS OF CLAIM BASED, IN
WHOLE OR IN PART, UPON
INVESTMENT IN I-40 GATEWAY
WEST, LLC 2ND LOAN; AND
CERTIFICATE OF SERVICE**

Date of Hearing: February 5, 2010
Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") moves under § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing the Proof of Claim filed by individual investors ("Direct Lenders") against USA

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

1 Commercial Mortgage Company (“USACM”) to the extent such claims are based, in
2 whole or in part, upon an investment in the I-40 Gateway West, LLC 2nd Loan (the “I-40
3 Gateway West 2nd Loan”). This Objection is supported by the Court’s record and the
4 Declaration of Edward M. Burr in Support of Omnibus Objections to Proofs of Claim
5 Based Upon the Investment in I-40 Gateway West 2nd Loan filed with the Court on April
6 4, 2008 [DE 6132] (the “Burr Decl.”).

7 **I. INTRODUCTION**

8 On February 14, 2007, the borrower paid off the I-40 Gateway West 2nd Loan in
9 full. In turn, USACM distributed the proceeds to the Direct Lenders who were paid in
10 full, subject to servicing fees and any other charges under their respective Loan Servicing
11 Agreements and this Court’s orders, including the Confirmation Order. This Objection
12 seeks an order from the Court disallowing Direct Lender claims to the extent they are
13 based upon an investment in the I-40 Gateway West 2nd Loan. To the extent a Direct
14 Lender claim is based upon an investment in a different loan, it will not be impacted by
15 this Objection.

16 **II. JURISDICTION**

17 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
18 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
19 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

20 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and
21 Bankruptcy Rule 3007.

22 **III. BACKGROUND**

23 On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA
24 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital
25 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC
26 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary

1 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate
2 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of
3 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the
4 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
5 ("Mesirow"), who served as the Chief Restructuring Officer.

6 USACM was a Nevada corporation that, prior to the Petition Date, was in the
7 business of underwriting, originating, brokering, funding and servicing commercial loans
8 primarily secured by real estate, both on behalf of investors and for its own account. That
9 business included the solicitation of individual investors to purchase fractional interest in
10 loans that USACM originated and then serviced. These investors, totaling approximately
11 3,600 as of the Petition Date, are referred to as "Direct Lenders" in USACM's bankruptcy
12 case and in this Objection. Although USACM serviced and sometimes originated the
13 loans in which the Direct Lenders invested, generally USACM was not a borrower on
14 these loans.

15 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third
16 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
17 2376] (the "Confirmation Order"). Under the Plan, the USACM Trust is the successor to
18 USACM with respect to standing to seek allowance and disallowance of Claims. The
19 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.
20 Geoffrey L. Berman is the Trustee.

21 The spreadsheet attached as **Exhibit A** lists Proofs of Claim filed by Direct Lenders
22 that appear to be based upon an investment in the I-40 Gateway West 2nd Loan. **Exhibit A**
23 shows the Proof of Claim number, the claimant, the claimant's address, the total amount of
24 the claim and the total amount of the claim that appears to be related to an investment in
25 the I-40 Gateway West 2nd Loan based upon the information provided by the claimant.
26

1 The claims listed in **Exhibit A** are referred to hereafter as the I-40 Gateway West 2nd
2 Claims. A copy of the first page of the proof(s) of claim listed on **Exhibit A** is attached
3 as **Exhibit B**.

4 On or about February 14, 2007, the I-40 Gateway West 2nd Loan was paid off in
5 full, as reflected in USACM's books and records. (Burr Decl. ¶ 8.) Shortly thereafter,
6 USACM processed the payoff and distributed the proceeds to the Direct Lenders on the I-
7 40 Gateway West 2nd Loan. *Id.* The Direct Lenders were in turn paid in full for their
8 investment in the I-40 Gateway West 2nd Loan, subject to servicing fees and any other
9 charges under their respective Loan Servicing Agreements and this Court's orders,
10 including the Confirmation Order. (Burr Decl. ¶ 9.) In general, the Direct Lenders
11 received their principal and interest on the I-40 Gateway West 2nd Loan, less sums
12 withheld for servicing fees, servicer advances, Prepaid Interest and sums known as the 2%
13 Holdback pursuant to the confirmed Plan. *Id.* On the Effective Date of the Plan, the
14 Prepaid Interest was applied, a portion of the 2% Holdback was applied to the allowed
15 claims of the Direct Lender Committee, and the balance paid to the Direct Lenders. *Id.*
16 Accordingly, the USACM Trust no longer has further obligations to the Direct Lenders
17 arising out of the I-40 Gateway West 2nd Loan. (Burr Decl. ¶ 10.)

18 **IV. OBJECTION**

19 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
20 will be allowed unless a party in interest objects. If a party in interest objects to the proof
21 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
22 shall allow the Claim except to the extent that the Claim is "unenforceable against the
23 debtor . . . under any . . . applicable law for a reason other than because such claim is
24 contingent or unmatured." 11 U.S.C. § 502(b). The USACM Trust is entitled to object to
25 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the confirmed
26

1 Plan, as the deadline for such objections has been extended to February 5, 2010, by this
2 Court's orders.

3 The USACM Trust objects to the I-40 Gateway West 2nd Claim and requests that the
4 Court disallow the claims listed in **Exhibit A** to the extent those claims are based upon a
5 Direct Lender investment in the I-40 Gateway West 2nd Loan because the Direct Lenders
6 were paid in full on their investments in I-40 Gateway West 2nd Loan. The USACM Trust
7 asks that the Court sustain this objection and grant such other and further relief as is just
8 and proper.

9 Dated: January 8, 2010.

10 LEWIS AND ROCA LLP

11
12 By /s/ John C. Hinderaker

13 Rob Charles, NV 6593

14 John C. Hinderaker, AZ 18024 (*pro hac vice*)
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Attorneys for the USACM Liquidating Trust

17 Copy of the foregoing and pertinent
18 Portion of Exhibit A and Exhibit B
19 mailed by first class
Postage prepaid U.S. mail
On January 8, 2010 to:

20 All parties in interest listed on
21 Exhibit A attached

22 /s/ Leilani Lista
23 Leilani Lista

24 Lewis and Roca LLP
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